



## Senate

General Assembly

**File No. 598**

*January Session, 2011*

Substitute Senate Bill No. 1218

*Senate, April 20, 2011*

The Committee on Finance, Revenue and Bonding reported through SEN. DAILY of the 33rd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE DENIAL OF CERTAIN LICENSE APPLICATIONS WHEN STATE TAXES ARE OWING AND VARIOUS CHANGES TO TITLE 12.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective July 1, 2011*) (a) As used in this section:
- 2 (1) "Commissioner" means the Commissioner of Revenue Services;
- 3 (2) "Department" means the Department of Revenue Services;
- 4 (3) "Issuance of a license" means the granting, renewing, amending
- 5 or supplementing of a license;
- 6 (4) "License" means the whole or part of any public agency permit,
- 7 certificate, approval, registration, charter or similar form of permission
- 8 to engage in a profession, trade, business or occupation;
- 9 (5) "License applicant" means the person making application for

10 issuance of a license and any other person required to be included in  
11 such application;

12 (6) "Person" means an individual, partnership, society, association,  
13 joint stock company, corporation, limited liability company, estate,  
14 receiver, trustee, assignee, referee or any other person acting in a  
15 fiduciary or representative capacity, whether appointed by a court or  
16 otherwise, or any combination of the foregoing;

17 (7) "Public agency" means any department within the executive  
18 branch of state government as listed in section 4-38c of the general  
19 statutes, the Department of Education, the Department of Higher  
20 Education, the Department of Information Technology and the  
21 Division of Criminal Justice; and

22 (8) "Taxes due to this state" means taxes, including penalties and  
23 interest, which are imposed under the laws of this state, which are  
24 finally due and payable to the commissioner, and with respect to  
25 which any administrative or judicial remedies, or both, have been  
26 exhausted or have lapsed. "Taxes due to this state" does not include  
27 taxes with respect to which a payment agreement, not in default, has  
28 been entered into by a taxpayer and the department.

29 (b) The commissioner may enter into a memorandum of  
30 understanding or other agreement with the department head of  
31 another public agency that issues licenses, to ensure that no license is  
32 issued by such public agency to a license applicant until such applicant  
33 has paid all taxes due to this state, provided the commissioner shall  
34 not enter into more than three such memoranda or agreements during  
35 any fiscal year. Such memorandum of understanding or other  
36 agreement shall (1) establish a means for such public agency, prior to  
37 the issuance of a license, to verify that an applicant has paid all taxes  
38 due to this state; (2) provide that, if an applicant has taxes due to this  
39 state, the commissioner shall provide notice and an opportunity for a  
40 department hearing to such applicant, which hearing shall be limited  
41 to verifying whether such applicant has taxes due to this state; and (3)  
42 provide that, if it is established to the satisfaction of the commissioner,

43 in consultation with the department head of another public agency,  
44 that an undue hardship would otherwise result to an applicant or that  
45 it is otherwise in the best interests of the state, a license shall be issued  
46 to such applicant, notwithstanding the fact that such applicant has  
47 taxes due to this state.

48 (c) Notwithstanding the provisions of section 12-15 of the general  
49 statutes, the commissioner may disclose to the department head of  
50 such other public agency information relating to whether a license  
51 applicant has paid all taxes due to this state.

52 (d) The commissioner may adopt regulations, in accordance with  
53 the provisions of chapter 54 of the general statutes, to implement the  
54 provisions of this section.

55 Sec. 2. Subsection (b) of section 12-35f of the general statutes is  
56 repealed and the following is substituted in lieu thereof (*Effective from*  
57 *passage*):

58 (b) (1) Upon the request and certification of the tax officer of a  
59 claimant state to the Commissioner of Revenue Services that a  
60 taxpayer owes taxes to such claimant state, the commissioner may  
61 withhold all or a portion of any refund to which such taxpayer would  
62 otherwise be entitled and pay over such withheld amount to the  
63 claimant state in accordance with the provisions of this section. The  
64 commissioner shall not withhold a refund unless the laws of the  
65 claimant state allow the Commissioner of Revenue Services to certify  
66 that a taxpayer owes taxes to this state and to request the tax officer of  
67 the claimant state to withhold all or a portion of any refund to which  
68 such taxpayer would otherwise be entitled, and provide for the  
69 payment over of such withheld amount to this state.

70 (2) Such certification shall include the full name and address of the  
71 taxpayer; the taxpayer's Social Security number or federal employer  
72 identification number; the amount of taxes owed to such state; [,  
73 including a detailed statement for each taxable period showing tax,  
74 interest and penalty;] and a statement that any administrative or

75 judicial remedies, or both, have been exhausted or have lapsed and  
76 that the amount of taxes is legally enforceable under the laws of such  
77 state.

78 (3) Upon receipt by the commissioner of the required certification,  
79 [he] the commissioner shall notify the taxpayer, if the taxpayer is  
80 otherwise entitled to a tax refund from this state, that [he] the  
81 commissioner has received a request from the claimant state to  
82 withhold all or a portion of any refund, that the taxpayer has the right  
83 to protest the withholding of the refund, that failure to file a protest in  
84 accordance with subdivision (4) of this subsection shall constitute a  
85 waiver of any demand against this state on account of such withheld  
86 amount and that the withheld amount will be paid over to the claimant  
87 state. [The notice shall include a copy of the certification by the tax  
88 officer of such claimant state.] Thirty days after the date on which [it is  
89 mailed, a notice under this subdivision] a notice under this subdivision  
90 is mailed, such notice shall be final except only for such amounts as to  
91 which the taxpayer has filed, as provided in subdivision (4) of this  
92 subsection, a written protest with the Commissioner of Revenue  
93 Services.

94 (4) Any taxpayer notified in accordance with subdivision (3) of this  
95 subsection may, on or before the thirtieth day after the mailing of such  
96 notice by the Commissioner of Revenue Services, protest the  
97 withholding of all or a portion of a refund by filing with the  
98 commissioner a written protest in which the taxpayer shall set forth  
99 the grounds on which the protest is based. If a timely protest is filed,  
100 the commissioner shall impound the claimed amount of the refund,  
101 pay to the taxpayer the unclaimed amount, if any, of the refund, send a  
102 copy of the protest to the claimant state for determination of the  
103 protest on its merits in accordance with the laws of that state, and pay  
104 over to the taxpayer the impounded amount if the claimant state shall  
105 fail on or before the forty-fifth day after the sending of the copy of the  
106 protest by the commissioner to such claimant state to recertify to the  
107 commissioner that the claimant state has reviewed the stated grounds  
108 on which the protest is based, and to recertify the amount of taxes

109 which is finally due and payable to the claimant state, which is legally  
110 enforceable under the laws of the claimant state against the taxpayer,  
111 and with respect to which any administrative or judicial remedies, or  
112 both, have been exhausted or have lapsed.

113 (5) Where the amount withheld in accordance with this subsection is  
114 a refund of any tax imposed upon the income of individuals and in  
115 connection with which the taxpayer filed a joint return with his or her  
116 spouse, and the spouse is not a taxpayer, the spouse shall have the  
117 right to be paid his or her portion of the refund by establishing his or  
118 her share of such refund. The amount of such spouse's share of such  
119 refund shall be established by recomputing the spouse's share of the  
120 joint liability and subtracting that amount from the taxpayer's  
121 contribution toward the joint liability, provided the amount of the  
122 overpayment refunded to the spouse shall not exceed the amount of  
123 the joint overpayment.

124 (6) Subject to the provisions of subdivisions (3), (4) and (5) of this  
125 subsection, the commissioner shall pay over to the claimant state the  
126 entire amount withheld or the amount certified, whichever is less; pay  
127 any refund in excess of the certified amount to the taxpayer; and, if the  
128 amount certified exceeds the amount withheld, withhold amounts  
129 from subsequent refunds due to the taxpayer, provided the claimant  
130 state agrees to withhold subsequent refunds due to taxpayers certified  
131 to the claimant state by the commissioner.

132 Sec. 3. Section 12-216a of the general statutes is repealed and the  
133 following is substituted in lieu thereof (*Effective from passage and*  
134 *applicable to income years commencing on or after January 1, 2011*):

135 (a) Any company that derives income from sources within this state  
136 [ or] and that has a substantial economic presence within this state,  
137 evidenced by a purposeful direction of business toward this state,  
138 examined in light of the frequency, quantity and systematic nature of a  
139 company's economic contacts with this state, without regard to  
140 physical presence, and to the extent permitted by the Constitution of  
141 the United States, shall be liable for the tax imposed under this

142 chapter. Such company shall apportion its net income under the  
143 provisions of this chapter.

144 (b) The provisions of subsection (a) of this section shall not apply to  
145 any company that is treated as a foreign corporation under the Internal  
146 Revenue Code and has no income effectively connected with a United  
147 States trade or business. To the extent that a company that is treated as  
148 a foreign corporation under the Internal Revenue Code has income  
149 effectively connected with a United States trade or business, such  
150 company's gross income, notwithstanding any provision of this  
151 chapter, shall be its income effectively connected with its United States  
152 trade or business. For net income tax apportionment purposes, only  
153 property used in, payroll attributable to and receipts effectively  
154 connected with such company's United States trade or business shall  
155 be considered for purposes of calculating such company's  
156 apportionment fraction. "Income effectively connected with a United  
157 States trade or business" shall be determined in accordance with the  
158 provisions of the Internal Revenue Code.

159 Sec. 4. Section 12-242g of the general statutes is repealed and the  
160 following is substituted in lieu thereof (*Effective October 1, 2011, and*  
161 *applicable to estimated corporation business tax payments for income years*  
162 *commencing on or after January 1, 2012*):

163 (a) If a company has paid as an installment of estimated tax an  
164 amount in excess of the amount determined to be the correct amount  
165 of such installment, such amount shall be credited against any unpaid  
166 installment or against the tax. If the amount already paid, whether or  
167 not on the basis of installments, exceeds the amount determined to be  
168 the correct amount of the tax, the company shall be paid by the State  
169 Treasurer, upon order of the Comptroller, the amount of such  
170 overpayment. [The commissioner may prescribe regulations providing  
171 for the crediting against the estimated tax for any taxable year of the  
172 amount determined to be an overpayment of the corporation business  
173 tax for a preceding taxable year.]

174 (b) If a company has filed its tax return under this chapter for the

175 income year on or before the due date of such return or, if an extension  
176 of time to file has been requested and granted, the extended due date  
177 of such return, any overpayment reported on such return, if the  
178 company has elected to credit such overpayment against the  
179 company's estimated tax for the succeeding income year, shall be  
180 treated as if paid on the due date of the first required installment of  
181 estimated tax for such succeeding income year. Such reported  
182 overpayment shall be credited against otherwise unpaid required  
183 installments in the order in which such installments are required to be  
184 paid under section 12-242d.

185       Sec. 5. Subdivision (3) of subsection (a) of section 12-686 of the  
186 general statutes is repealed and the following is substituted in lieu  
187 thereof (*Effective July 1, 2011, and applicable to tax periods ending on or*  
188 *after said date*):

189       (3) (A) Except as otherwise provided in subsections (b) and (c) of  
190 this section, the commissioner may require every employer who is  
191 deducting and withholding Connecticut income tax from employee  
192 wages to pay such tax during the twelve-month period following a  
193 determination of liability under this subdivision, by one of the means  
194 of electronic funds transfer approved by the department, if the  
195 commissioner determines that the amount of Connecticut income tax  
196 deducted and withheld from employee wages by such employer was  
197 more than two thousand dollars for the twelve-month period ending  
198 on the June thirtieth immediately preceding the quarterly period with  
199 respect to which the requirement to pay over tax by electronic funds  
200 transfer is established. The commissioner, in determining whether tax  
201 liability is more than two thousand dollars, shall base such  
202 determination on the taxes reported to be due on the quarterly  
203 withholding tax returns of such employer related to the period under  
204 examination. If any such tax return of such [person] employer for such  
205 period has not been filed, the commissioner may base such  
206 determination on any information available to the commissioner.

207       (B) Except as otherwise provided in subsections (b) and (c) of this

208 section, the commissioner may require every payer, as defined in  
209 section 12-707, as amended by this act, who is deducting and  
210 withholding Connecticut income tax from nonpayroll amounts, as  
211 defined in section 12-707, as amended by this act, to pay such tax for  
212 the calendar year, following a determination of liability under this  
213 subdivision, by one of the means of electronic funds transfer approved  
214 by the department, if the commissioner determines that the amount of  
215 Connecticut income tax deducted and withheld from nonpayroll  
216 amounts by such payer for the look-back calendar year, as defined in  
217 section 12-707, as amended by this act, was more than two thousand  
218 dollars. The commissioner, in determining whether the amount of  
219 Connecticut income tax deducted and withheld for the look-back  
220 calendar year, is more than two thousand dollars, shall base such  
221 determination on the tax reported to be due on the withholding tax  
222 return of such payer for such look-back calendar year. If any such tax  
223 return of such payer for such period has not been filed, the  
224 commissioner may base such determination on any information  
225 available to the commissioner.

226       Sec. 6. Section 12-707 of the general statutes is repealed and the  
227 following is substituted in lieu thereof (*Effective July 1, 2011, and*  
228 *applicable to sales of a business or stock of goods occurring on or after said*  
229 *date*):

230       (a) (1) Each employer required to deduct and withhold tax under  
231 this chapter from the wages of employees shall be liable for such tax  
232 and shall file a withholding return as prescribed by the Commissioner  
233 of Revenue Services and pay over to the commissioner, or to a  
234 depository designated by the commissioner, the taxes so required to be  
235 deducted and withheld at the times specified in subsection (b) of this  
236 section.

237       (2) Each payer of nonpayroll amounts shall deduct and withhold tax  
238 under this chapter from the nonpayroll amounts of payees, shall be  
239 liable for such tax, and shall file a withholding return as prescribed by  
240 the commissioner and pay over to the commissioner, or to a depository



241 designated by the commissioner, the taxes so required to be deducted  
242 and withheld at the times specified in subsection (b) of this section.

243 (b) (1) (A) With respect to the tax required to be deducted and  
244 withheld under this chapter from wages paid during any calendar year  
245 beginning on or after January 1, 2005, and in accordance with an  
246 annual determination described in subdivision (2) of this subsection,  
247 each employer shall be either a weekly remitter, monthly remitter or  
248 quarterly remitter for the calendar year. If an employer is a weekly  
249 remitter, the employer shall pay over to the commissioner the tax  
250 required to be deducted and withheld under this chapter in  
251 accordance with subdivision (3) of this subsection. If an employer is a  
252 monthly remitter, the employer shall pay over to the commissioner the  
253 tax required to be deducted and withheld under this chapter in  
254 accordance with subdivision (4) of this subsection. If an employer is a  
255 quarterly remitter, the employer shall pay over to the commissioner  
256 the tax required to be deducted and withheld under this chapter in  
257 accordance with subdivision (5) of this subsection. Notwithstanding  
258 any provision of this subsection, if an employer is a household  
259 employer, the employer shall pay over to the commissioner the tax  
260 required to be deducted and withheld under this chapter in  
261 accordance with subdivision (6) of this subsection.

262 (B) With respect to the tax required to be deducted and withheld  
263 under this chapter from nonpayroll amounts paid during any calendar  
264 year beginning on or after January 1, 2005, and in accordance with an  
265 annual determination described in subdivision (2) of this subsection,  
266 each payer shall be either a weekly remitter, monthly remitter or  
267 quarterly remitter for the calendar year. If a payer is a weekly remitter,  
268 the payer shall pay over to the commissioner the tax required to be  
269 deducted and withheld under this chapter in accordance with  
270 subdivision (3) of this subsection. If a payer is a monthly remitter, the  
271 payer shall pay over to the commissioner the tax required to be  
272 deducted and withheld under this chapter in accordance with  
273 subdivision (4) of this subsection. If a payer is a quarterly remitter, the  
274 payer shall pay over to the commissioner the tax required to be

275 deducted and withheld under this chapter in accordance with  
276 subdivision (5) of this subsection.

277 (2) (A) The annual determination for an employer required to  
278 deduct and withhold tax under this chapter shall be based on the  
279 employer's reported liability for the tax required to be deducted and  
280 withheld under this chapter during the twelve-month look-back  
281 period, provided, if any employer fails timely to file one or more  
282 required withholding tax returns for the four quarterly periods within  
283 the twelve-month look-back period, the commissioner may base the  
284 annual determination for the employer on any information available to  
285 the commissioner. If an employer's reported liability for the tax  
286 required to be deducted and withheld under this chapter during the  
287 twelve-month look-back period was more than ten thousand dollars,  
288 the employer is a weekly remitter for the calendar year next  
289 succeeding such twelve-month period. If an employer's reported  
290 liability for the tax required to be deducted and withheld under this  
291 chapter during the twelve-month look-back period was more than two  
292 thousand dollars but not more than ten thousand dollars, the employer  
293 is a monthly remitter for the calendar year next succeeding such  
294 twelve-month period. If an employer's reported liability for the tax  
295 required to be deducted and withheld under this chapter during the  
296 twelve-month look-back period was two thousand dollars or less, the  
297 employer is a quarterly remitter for the calendar year next succeeding  
298 such twelve-month period. Notwithstanding any provision of this  
299 section, if an employer is a seasonal employer, the annual  
300 determination shall be based on the seasonal employer's reported  
301 liability for the tax required to be deducted and withheld under this  
302 chapter during the twelve-month look-back period multiplied by a  
303 fraction, the numerator of which is four, and the denominator of which  
304 is the number of quarterly periods during such twelve-month period  
305 that the employer paid wages to employees.

306 (B) The annual determination for a payer required to deduct and  
307 withhold tax under this chapter shall be based on the payer's reported  
308 liability for the tax required to be deducted and withheld under this

chapter during the look-back calendar year, provided, if any payer fails timely to file the required withholding tax return for the look-back calendar year, the commissioner may base the annual determination for the payer on any information available to the commissioner. If a payer's reported liability for the tax required to be deducted and withheld under this chapter during the look-back calendar year was more than ten thousand dollars, the payer is a weekly remitter for the calendar year for which the annual determination is being made. If a payer's reported liability for the tax required to be deducted and withheld under this chapter during the look-back calendar year was more than two thousand dollars but not more than ten thousand dollars, the payer is a monthly remitter for the calendar year for which the annual determination is being made. If a payer's reported liability for the tax required to be deducted and withheld under this chapter during the look-back calendar year was two thousand dollars or less, the payer is a quarterly remitter for the calendar year for which the annual determination is being made.

(3) (A) An employer that is a weekly remitter shall pay over to the department the tax required to be deducted and withheld from wages under this chapter on or before the Wednesday next succeeding the weekly period during which the wages from which the tax was required to be deducted and withheld were paid to employees.

(B) A payer that is a weekly remitter shall pay over to the department the tax required to be deducted and withheld from nonpayroll amounts under this chapter on or before the Wednesday next succeeding the weekly period during which the nonpayroll amounts from which the tax was required to be deducted and withheld were paid to payees.

(4) (A) An employer that is a monthly remitter shall pay over to the department the tax required to be deducted and withheld from wages under this chapter on or before the fifteenth day of the month next succeeding the month during which the wages from which the tax was required to be deducted and withheld were paid to employees.

342 (B) A payer that is a monthly remitter shall pay over to the  
343 department the tax required to be deducted and withheld from  
344 nonpayroll amounts under this chapter on or before the fifteenth day  
345 of the month next succeeding the month during which the nonpayroll  
346 amounts from which the tax was required to be deducted and  
347 withheld were paid to payees.

348 (5) (A) An employer that is a quarterly remitter shall pay over to the  
349 department the tax required to be deducted and withheld from wages  
350 under this chapter on or before the last day of the month next  
351 succeeding the quarterly period during which the wages from which  
352 the tax was required to be deducted and withheld were paid to  
353 employees.

354 (B) A payer that is a quarterly remitter shall pay over to the  
355 department the tax required to be deducted and withheld from  
356 nonpayroll amounts under this chapter on or before the last day of the  
357 month next succeeding the quarterly period during which the  
358 nonpayroll amounts from which the tax was required to be deducted  
359 and withheld were paid to payees.

360 (6) An employer that is a household employer shall pay over to the  
361 department the tax required to be deducted and withheld under this  
362 chapter on or before the April fifteenth next succeeding the calendar  
363 year during which the wages from which the tax was required to be  
364 deducted and withheld were paid to household employees.

365 (c) In the case of an overpayment of tax under this chapter by an  
366 employer, refund or credit shall be made to the employer only to the  
367 extent that the amount of such overpayment was not deducted and  
368 withheld by the employer.

369 (d) The amount of tax required to be deducted and withheld and  
370 paid over to the commissioner under this chapter, when so deducted  
371 and withheld, shall be held to be a special fund in trust for the state.  
372 No employee or other person shall have any right of action against the  
373 employer in respect to any moneys deducted and withheld from

374 wages and paid over to the commissioner in compliance or in intended  
375 compliance with this chapter.

376 (e) (1) If an employer required to deduct and withhold tax under  
377 this chapter from the wages of employees and to pay over to the  
378 commissioner the taxes so required to be deducted and withheld sells  
379 out the employer's business or stock of goods or quits the employer's  
380 business, such employer's successors or assigns shall withhold a  
381 sufficient portion of the purchase price to cover the amount of such  
382 taxes, and any interest and penalties thereon, due and unpaid, as of the  
383 time of such sale or quitting of the business, until the employer  
384 produces a receipt from the commissioner showing that the taxes,  
385 interest and penalties have been paid or a certificate indicating that no  
386 such taxes are due.

387 (2) If the purchaser of a business or stock of goods fails to withhold  
388 a portion of the purchase price as required, the purchaser shall be  
389 personally liable for the payment of the amount required to be  
390 withheld by the purchaser, to the extent of the purchase price, valued  
391 in money. Not later than sixty days after the latest of the dates  
392 specified in subdivision (3) of this subsection, the commissioner shall  
393 either issue a certificate indicating that no taxes are due or mail notice  
394 to the purchaser in the manner provided in section 12-728 of the  
395 amount that must be paid as a condition of issuing the certificate.  
396 Failure of the commissioner to mail the notice shall release the  
397 purchaser from any further obligation to withhold a portion of the  
398 purchase price as provided in this subsection. The period within which  
399 the obligation of the successor may be enforced shall begin when the  
400 employer sells out the employer's business or stock of goods or quits  
401 the business or when the assessment against the employer becomes  
402 final, whichever event occurs later.

403 (3) For purposes of subdivision (2) of this subsection, the latest of  
404 the following dates shall apply:

405 (A) The date that the commissioner receives a written request from  
406 the purchaser for a certificate;

407        (B) The date of the sale or quitting of the business; or

408        (C) The date that the employer's records are made available to the  
409        commissioner for audit.

410        [(e)] (f) As used in this section:

411        (1) "Employer" means an employer, as defined in Section 3401 of the  
412        Internal Revenue Code;

413        (2) "Payer" means a person making a payment of nonpayroll  
414        amounts to one or more payees;

415        (3) "Payee" means a person receiving a payment of nonpayroll  
416        amounts from a payer;

417        (4) "Nonpayroll amounts" includes (A) gambling winnings, other  
418        than Connecticut lottery winnings, that are paid to a resident, or to a  
419        person receiving payment on behalf of a resident, and that are subject  
420        to federal income tax withholding; (B) Connecticut lottery winnings  
421        that are required to be reported by the Connecticut Lottery  
422        Corporation to the Internal Revenue Service, whether or not subject to  
423        federal income tax withholding, whether paid to a resident,  
424        nonresident or a part-year resident, and whether paid to an individual,  
425        trust or estate; (C) pension and annuity distributions, where the  
426        recipient is a resident individual and has requested that tax be  
427        deducted and withheld under this chapter; (D) military retired pay,  
428        where the payee is a resident individual and has requested that tax be  
429        deducted and withheld under this chapter; (E) unemployment  
430        compensation, where the recipient has requested that tax be deducted  
431        and withheld under this chapter; and (F) payments made to an athlete  
432        or entertainer, where the payments are not wages for federal income  
433        tax withholding purposes and where the commissioner requires the  
434        payer to deduct and withhold tax under this chapter;

435        (5) "Reported liability" means, in the case of an employer, the  
436        liability for the tax required to be deducted and withheld under this  
437        chapter, as shown on the employer's withholding tax returns for the

438 four quarterly periods within the twelve-month look-back period, and,  
439 in the case of a payer, the liability for the tax required to be deducted  
440 and withheld under this chapter, as shown on the payer's withholding  
441 tax return for the look-back calendar year;

442 (6) "Twelve-month look-back period" means the twelve-month  
443 period that ended on the June thirtieth next preceding the calendar  
444 year for which the annual determination for an employer is made by  
445 the commissioner;

446 (7) "Look-back calendar year" means the calendar year preceding by  
447 two years the calendar year for which the annual determination for a  
448 payer is made by the commissioner;

449 (8) "Seasonal employer" means an employer that regularly in the  
450 same one or more quarterly periods of each calendar year pays no  
451 wages to employees;

452 (9) "Household employee" means an employee whose services of a  
453 household nature in or about a private home of an employer constitute  
454 domestic service in a private home of the employer, as the phrase is  
455 used in Section 3121(a)(7) of the Internal Revenue Code or in  
456 regulations adopted thereunder;

457 (10) "Household employer" means an employer of a household  
458 employee;

459 (11) "Weekly period" means the seven-day period beginning on a  
460 Saturday and ending on the following Friday; and

461 (12) "Quarterly period" means the period of three full months  
462 beginning on the first day of January, April, July or October.

463 Sec. 7. Subsection (b) of section 12-733 of the general statutes is  
464 repealed and the following is substituted in lieu thereof (*Effective from*  
465 *passage and applicable to taxable years commencing on or after January 1,*  
466 *2011*):

467 (b) (1) If the taxpayer omits from Connecticut adjusted gross  
468 income, in the case of an individual, or from Connecticut taxable  
469 income, in the case of a trust or estate, an amount properly includable  
470 therein which is in excess of twenty-five per cent of the amount of  
471 Connecticut adjusted gross income or Connecticut taxable income, as  
472 the case may be, stated in the return, a notice of a proposed deficiency  
473 assessment may be mailed to the taxpayer [within] not later than six  
474 years after the date on which the return is filed. For purposes of this  
475 [subsection] subdivision, there shall not be taken into account any  
476 amount which is omitted in the return if such amount is disclosed in  
477 the return, or in a statement attached to the return, in a manner  
478 adequate to apprise the Commissioner of Revenue Services of the  
479 nature and the amount of such item.

480 (2) If the taxpayer omits from the Connecticut adjusted gross income  
481 derived from or connected with sources within this state, in the case of  
482 a nonresident individual or part-year resident individual, or from  
483 Connecticut taxable income derived from or connected with sources  
484 within this state, in the case of a nonresident trust or estate of part-year  
485 resident trust, an amount properly includable therein which is in  
486 excess of twenty-five per cent of the amount of Connecticut adjusted  
487 gross income derived from or connected with sources within this state  
488 or Connecticut taxable income derived from or connected with sources  
489 within this state, as the case may be, stated in the return, a notice of a  
490 proposed deficiency assessment may be mailed to the taxpayer  
491 [within] not later than six years after the date on which the return is  
492 filed. For purposes of this [subsection] subdivision, there shall not be  
493 taken into account any amount which is omitted in the return if such  
494 amount is disclosed in the return, or in a statement attached to the  
495 return, in a manner adequate to apprise the [Commissioner of Revenue  
496 Services] commissioner of the nature and the amount of such item.

497 (3) If an employer, as defined in section 12-707, as amended by this  
498 act, omits from Connecticut wages an amount properly includable that  
499 is in excess of twenty-five per cent of the amount of Connecticut wages  
500 stated in the Connecticut withholding tax return required under



501 section 12-707, as amended by this act, a notice of a proposed  
502 deficiency assessment may be mailed to the employer not later than six  
503 years after the date on which the return is filed. For purposes of this  
504 subdivision, there shall not be taken into account any amount which is  
505 omitted in the return if such amount is disclosed in the return, or in a  
506 statement attached to the return, in a manner adequate to apprise the  
507 commissioner of the nature and the amount of such item.

508 (4) If a pass-through entity, as defined in subparagraph (D) of  
509 subdivision (2) of subsection (b) of section 12-719, omits from the  
510 Connecticut adjusted gross income derived from or connected with  
511 sources within Connecticut of any nonresident individual who is a  
512 member of such pass-through entity an amount properly includable  
513 therein which is in excess of twenty-five per cent of the amount of  
514 Connecticut adjusted gross income derived from or connected with  
515 sources within Connecticut stated in the return, a notice of a proposed  
516 deficiency assessment may be mailed to the taxpayer not later than six  
517 years after the date on which the return is filed. For purposes of this  
518 subdivision, there shall not be taken into account any amount which is  
519 omitted in the return if such amount is disclosed in the return, or in a  
520 statement attached to the return, in a manner adequate to apprise the  
521 commissioner of the nature and the amount of such item.

522 Sec. 8. Subdivision (80) of section 12-412 of the general statutes is  
523 repealed and the following is substituted in lieu thereof (*Effective from*  
524 *passage and applicable to all open tax periods*):

525 (80) (A) Sales and the storage, use or other consumption of special  
526 equipment installed in a motor vehicle for the exclusive use of a person  
527 with physical disabilities and repair or replacement parts for such  
528 equipment, whether such repair or replacement parts are purchased  
529 separately or in conjunction with such equipment, and whether such  
530 parts continue the original function or enhance the functionality of  
531 such equipment.

532 (B) When a motor vehicle in which special equipment exclusively  
533 for the use of a person with physical disabilities has previously been

534 installed is sold by a licensed motor vehicle dealer for use by a person  
535 with physical disabilities, the taxes imposed by this chapter shall not  
536 apply to the portion of the sales price attributable to such equipment.  
537 Unless established otherwise, the portion of the sales price attributable  
538 to the motor vehicle shall be deemed to be the value determined  
539 pursuant to subsection (b) of section 12-431, as amended by this act.

540       Sec. 9. Section 12-431 of the general statutes is repealed and the  
541 following is substituted in lieu thereof (*Effective from passage and*  
542 *applicable to all open tax periods*):

543       (a) (1) Except as otherwise provided in subdivision (2) or (3) of this  
544 subsection, in case of the purchase of any motor vehicle, snowmobile,  
545 vessel or aircraft other than from a licensed motor vehicle dealer or  
546 licensed motor vehicle lessor, a snowmobile dealer, a licensed marine  
547 dealer or a retailer of aircraft, respectively, the receipts therefrom shall  
548 not be included in the measure of the sales tax, but the purchaser  
549 thereof shall pay a use tax on the total purchase price thereof to the  
550 Commissioner of Revenue Services, as provided in section 12-411, in  
551 the case of tangible personal property purchased from a retailer, and,  
552 in the case of motor vehicles, vessels and snowmobiles, before  
553 obtaining an original or transferal registration, in accordance with  
554 regulations prescribed by the Commissioner of Revenue Services and  
555 on forms approved by the Commissioner of Revenue Services and the  
556 Commissioner of Motor Vehicles, and, in the case of aircraft, before  
557 obtaining an original or transferal registration, in accordance with  
558 regulations prescribed by the Commissioner of Revenue Services and  
559 on forms approved by the Commissioner of Revenue Services and the  
560 Commissioner of Transportation.

561       (2) No use tax shall be payable in cases of purchase (A) when the  
562 purchaser is the spouse, mother, father, brother, sister or child of the  
563 seller, (B) when a motor vehicle or vessel is sold in connection with the  
564 organization, reorganization or liquidation of an incorporated  
565 business, provided the last taxable sale or use of the motor vehicle or  
566 vessel was subjected to a tax imposed by this chapter and the

567 purchaser is the incorporated business or a stockholder thereof, (C)  
 568 when a motor vehicle is sold in connection with the organization or  
 569 termination of a partnership or limited liability company, provided the  
 570 last taxable sale or use of the motor vehicle was subjected to a tax  
 571 imposed by this chapter and the purchaser is the partnership or  
 572 limited liability company, as the case may be, or a partner or member,  
 573 thereof, as the case may be, or (D) when a motor vehicle which has  
 574 been declared a total loss pursuant to the provisions of section 14-16c is  
 575 rebuilt for sale or use, provided the purchaser was subjected to the tax  
 576 imposed by this chapter for the last taxable sale of said vehicle.

577 (3) When a motor vehicle in which special equipment has  
 578 previously been installed exclusively for the use of a person with  
 579 physical disabilities is sold for use by a person with physical  
 580 disabilities, the purchaser shall pay a use tax on the total purchase  
 581 price of the vehicle, less the portion of such price attributable to such  
 582 special equipment. Unless established otherwise, the portion of the  
 583 purchase price attributable to the motor vehicle shall be deemed to be  
 584 the value determined pursuant to subsection (b) of this section.

585 (b) In order to determine the total purchase price of a motor vehicle  
 586 for the purposes of this section, the commissioner shall, by regulation,  
 587 adopt by reference a book of valuations, for various purposes, of motor  
 588 vehicles published by a nationally recognized organization. The  
 589 commissioner shall, by regulation, determine which of the various  
 590 valuations of motor vehicles contained in any such book is appropriate  
 591 for the purposes of this section and such value shall, regardless of the  
 592 value placed on the motor vehicle at the time of the purchase by the  
 593 parties to such transaction, be presumed to be the total purchase price  
 594 of such motor vehicle for the purposes of this section unless the  
 595 purchaser can prove to the satisfaction of the commissioner that such  
 596 value is incorrect.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2011	New section

Sec. 2	<i>from passage</i>	12-35f(b)
Sec. 3	<i>from passage and applicable to income years commencing on or after January 1, 2011</i>	12-216a
Sec. 4	<i>October 1, 2011, and applicable to estimated corporation business tax payments for income years commencing on or after January 1, 2012</i>	12-242g
Sec. 5	<i>July 1, 2011, and applicable to tax periods ending on or after said date</i>	12-686(a)(3)
Sec. 6	<i>July 1, 2011, and applicable to sales of a business or stock of goods occurring on or after said date</i>	12-707
Sec. 7	<i>from passage and applicable to taxable years commencing on or after January 1, 2011</i>	12-733(b)
Sec. 8	<i>from passage and applicable to all open tax periods</i>	12-412(80)
Sec. 9	<i>from passage and applicable to all open tax periods</i>	12-431

**FIN**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

### **OFA Fiscal Note**

#### **State Impact:**

Agency Affected	Fund-Effect	FY 12 \$	FY 13 \$
Department of Revenue Services	GF - See Below	See Below	See Below

Note: GF=General Fund

#### **Municipal Impact:** None

#### **Explanation**

The bill makes a number of changes which result in the following impacts:

**Section 1** establishes a process by which license applicants must verify they owe no state taxes. This results in a potential revenue gain to the state, to the extent that applicants do owe state taxes.

**Section 2** does not impact the approximately \$3.0 million annually that the state receives under reciprocal tax refund agreements with other states.

**Sections 3-5** consist of technical and clarifying changes that do not result in any fiscal impact.

**Section 6** addresses withholding liability with respect to certain aspects of business succession, which does not result in any fiscal impact.

**Section 7** extends timelines for the Department of Revenue Services (DRS) to make certain deficiency assessments against employers in certain circumstances. To the extent that this allows DRS to levy deficiency assessments that would not otherwise occur, this results in a potential revenue gain.

**Sections 8-9** result in a minimal revenue loss due to the exemption of certain handicapped equipment from the Sales Tax.

***The Out Years***

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

**OLR Bill Analysis****sSB 1218*****AN ACT CONCERNING THE DENIAL OF CERTAIN LICENSE APPLICATIONS WHEN STATE TAXES ARE OWING AND VARIOUS CHANGES TO TITLE 12.*****SUMMARY:**

This bill allows the Department of Revenue Services (DRS) commissioner to make up to three agreements annually with heads of state agencies that issue business, professional, and occupational licenses to require license applicants to pay any state taxes they owe before receiving a license, unless the applicant demonstrates that (1) not issuing the license will cause the applicant undue hardship or (2) issuing it is otherwise in the state's best interests.

The bill also:

1. eliminates certain notice and certification requirements when the DRS commissioner withholds a taxpayer's Connecticut tax refund at the request of another state where the taxpayer owes taxes;
2. (a) requires a company to meet both, rather than one, of the existing criteria to have economic nexus in Connecticut and thus be liable for corporation tax and (b) exempts certain foreign corporations from economic nexus in conformity with DRS's current policy;
3. gives a company that overpays its estimated corporation tax for the year the option to apply the overpayment to its estimated tax payments in the following year;
4. allows the DRS commissioner to require payers that withhold Connecticut income tax from nonpayroll amounts to pay the

withholding tax to DRS electronically on the same basis as employers;

5. requires a successor who buys a business or its entire stock from an employer to withhold enough funds from the purchase price to cover any withholding tax due until the employer produces either a DRS receipt for the tax payment or a DRS certificate that no taxes are due;
6. extends from three to six years the deadline for DRS to send a tax deficiency assessment notice to any employer or pass-through entity that omits from its withholding tax return more than 25% of includable adjusted gross income withheld from employee wages or payments to nonresident members, respectively; and
7. exempts from sales and use tax, any part of the sale price of a vehicle that has special equipment for the exclusive use of a person with physical disabilities already installed, if the vehicle is sold to such a person.

EFFECTIVE DATE: Various, see below

## **§ 1 — STATE TAX PAYMENT AS A CONDITION OF ISSUING STATE LICENSE**

The bill allows the DRS commissioner and the head of any agency that issues any professional, occupational, or business license to enter into a memorandum of understanding or other agreement to require license applicants to pay state taxes they owe before receiving a license. It bars the DRS commissioner from making more than three such agreements in any fiscal year. The bill covers any individual, business, society, association, estate, receiver, trustee, assignee, or court-appointed or other fiduciary or representative who applies for a state occupational, professional, or business license or who must be included in the application.

Agreements must (1) ensure that no license is issued until the



applicant pays what he or she owes and (2) establish a method for the licensing agency to verify that applicants owe no state taxes. Taxes owed include taxes, penalties, and interest due to the state and for which all administrative or judicial remedies for disputing amounts owed have expired or been exhausted. They do not include payments due under a payment agreement between DRS and a taxpayer that is not in default.

Agreements must also require the licensing agency to issue the license, regardless of whether the applicant owes state taxes, if the applicant establishes to the DRS commissioner's satisfaction, after consultation with the licensing agency head, that (1) failure to issue the license will cause the applicant undue hardship or (2) issuing the license is otherwise in the state's best interest.

Agreements must require that, if a license applicant owes state taxes, the DRS commissioner must give the applicant notice and an opportunity for a hearing. The hearing is limited to verifying that the applicant owes state taxes.

The bill allows the DRS commissioner to (1) disclose to the licensing agency head with whom the commissioner has an agreement, information about whether a license applicant has paid all state taxes owed and (2) adopt implementing regulations.

EFFECTIVE DATE: July 1, 2011

## **§ 2 — RECIPROCAL TAX REFUND AGREEMENTS WITH OTHER STATES**

Existing law allows the DRS commissioner to withhold all or part of a taxpayer's Connecticut tax refund if (1) another state to which the taxpayer owes taxes requests it and (2) the other state authorizes its tax officials to withhold tax refunds from a taxpayer who owes taxes to Connecticut. Under current law, as part of such a request, the other state's tax officer must certify:

1. the taxpayer's full name, address, and Social Security or federal

employer identification number;

2. the amount to be collected, including a detailed statement showing the tax, interest, and penalty for each taxable period; and
3. that applicable administrative and judicial remedies have been exhausted or have expired and the tax amount is legally enforceable.

The bill eliminates the requirement that the officer's certification include a detailed statement showing the tax, interest, and penalty for each taxable period.

Current law also requires the DRS commissioner to notify the taxpayer whenever he receives such a certification. The bill requires him to do so only if the taxpayer is otherwise entitled to a Connecticut tax refund. It also eliminates a requirement that the commissioner include a copy of the other state's certification with the notice.

EFFECTIVE DATE: Upon passage

### **§ 3 — ECONOMIC NEXUS FOR CORPORATION TAX**

Under current law, and to the extent allowed by the U.S. Constitution, a company is subject to the Connecticut corporation tax if, regardless of physical presence, it (1) has a "substantial economic presence" here or (2) derives income from sources in the state. The bill requires that, to be subject to the Connecticut tax, a company must meet both rather than only one of these conditions.

By law, a company has "substantial economic presence" in Connecticut if it purposefully directs business towards the state, which must be determined by the frequency, quantity, and systematic nature of its economic contact with the state.

The bill also makes the law conform to DRS policy by exempting from the tax any company that (1) is treated as a foreign corporation under the federal tax code and (2) has no income "effectively

connected” with a U.S. trade or business, as determined under the code. But if, and to the extent that, a company treated as a foreign corporation has income effectively connected with a U.S. trade or business, that income must be considered to be its gross income for Connecticut corporation tax purposes, regardless of other corporation tax statutes. In addition, when such a company calculates its net income apportionment fractions to determine its Connecticut corporation tax liability, the bill requires it to do so using only its U.S.-connected property, payroll, and receipts.

EFFECTIVE DATE: Upon passage and applicable to income years starting on or after January 1, 2011.

#### **§ 4 — ESTIMATED CORPORATION TAX OVERPAYMENTS**

By law, a corporation must make estimated corporation tax payments in four installments during its income year as follows: 30% of its estimated annual liability in the third month, 40% in the sixth, 10% in the ninth, and 20% in the 12<sup>th</sup>. If a company overpays one installment, the law requires the excess to be credited against the next installment. But, if the amount paid for the year exceeds the amount due for that year, under current law, the company receives a refund.

This bill gives a company that has overpaid its estimated corporation tax in one income year the option to apply the excess to its estimated taxes in the following year instead of receiving a refund. (DRS policy already allows companies to do this.) It requires the excess to be applied to the first installment due in the next income year and to any subsequent installments in the order they are due. The bill also eliminates the DRS commissioner’s authority to adopt regulations concerning how excess estimated corporation tax payments are credited from one year to the next.

EFFECTIVE DATE: October 1, 2011, and applicable to estimated corporation tax payments for income years starting on or after January 1, 2012.

**§ 5 — ELECTRONIC FUNDS TRANSFER REQUIREMENTS FOR WITHHOLDING TAX PAYMENTS FROM NONPAYROLL AMOUNTS**

By law, the DRS commissioner can require employers with more than \$2,000 in annual income tax withholding liability from wages to pay the taxes electronically. The bill also allows the commissioner to require electronic payments from any payers that had more than \$2,000 in income tax withholding liability from nonpayroll amounts. The commissioner must determine a payer's annual withholding tax liability based on the amount the payer withheld from nonpayroll amounts in the calendar year two years before the one in which the commissioner makes the determination.

As under existing law, the commissioner must notify the payer of the electronic payment requirement.

By law, nonpayroll amounts include:

1. gambling winnings paid to Connecticut residents that are subject to federal income tax withholding (i.e., payments over \$5,000);
2. Connecticut lottery winnings that must be reported to the IRS, regardless of whether they are subject to federal withholding (i.e., payments of \$600 or more and 300 times the wager);
3. pension and annuity distributions and military retirement paid to Connecticut residents requesting state income tax withholding;
4. unemployment compensation paid to those requesting state income tax withholding; and
5. nonwage payments to athletes or entertainers for which the DRS commissioner requires withholding (generally, fees over \$1,000 unless DRS grants a waiver) (CGS § 12-707 (e)(4)).

EFFECTIVE DATE: July 1, 2011, and applicable to tax periods ending on or after that date.

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**§ 6 — SUCCESSOR LIABILITY FOR WITHHOLDING TAXES**

Under the bill, when an employer who is required to pay withholding taxes sells or quits its business or sells out its entire stock, the employer's successors or assigns must hold back enough money from the purchase price to cover any unpaid withholding taxes, penalties, or interest due when the employer sells or quits. The buyer must hold back the money until the employer provides either a DRS receipt showing that the employer has paid all taxes, penalties, and interest or a DRS certificate stating that no taxes are due. If the buyer fails to hold back the money, the bill makes the buyer personally liable for the amount that should have been withheld, up to the monetary value of the purchase price of the business or stock.

The bill requires the DRS commissioner to issue the certificate or mail the buyer a tax deficiency assessment notice according the regular procedure for such notices within 60 days after the latest of the following: (1) the date the commissioner receives the buyer's written request for a certificate that no taxes are due, (2) the date the employer sold or quit the business, or (3) the date the employer's records become available for DRS audit. If the commissioner fails to mail the deficiency assessment notice in time, the buyer need not hold back money from the purchase price.

Under the bill, the statutory three-year time limit for enforcing the successor's liability starts when (1) the employer sells or quits the business or (2) the assessment against the employer becomes final, whichever is later.

EFFECTIVE DATE: July 1, 2011, and applicable to sales of businesses and stock occurring on or after that date.

**§ 7 — WITHHOLDING TAX DEFICIENCY ASSESSMENT DEADLINE**

By law, DRS has six years, rather than the usual three, to send an income tax deficiency assessment notice to a taxpayer who omits more than 25% of his includable Connecticut adjusted gross income (AGI) from his income tax return without giving DRS adequate notice of the

amount and nature of the omission in either the return itself or an attached statement.

The bill extends the same six-year the time limit for DRS to send a tax deficiency assessment notice to (1) an employer that omits more than 25% of Connecticut wages from its withholding tax return or (2) a pass-through entity that omits more than 25% of includable Connecticut-sourced AGI from the withholding taxes required for its nonresident members. As under existing law, in either case, there must be no adequate notice of the amount and nature of the omission in the return or an attached statement.

By law, a “pass-through entity” is an S corporation; a general, limited, or limited liability partnership; or a limited liability company treated for tax purposes as a partnership. A “member” is a shareholder in an S corporation; a partner in a general, limited, or limited liability partnership; and a member in a limited liability company.

EFFECTIVE DATE: Upon passage and applicable to tax years starting on or after January 1, 2011.

#### **§§ 8 & 9 — SALE OF USED MOTOR VEHICLE CONTAINING TAX-EXEMPT SPECIAL EQUIPMENT**

By law, the sale of special equipment to be installed in a motor vehicle for the exclusive use of a person with physical disabilities is exempt from sales and use tax. This bill also exempts the part of the sale price attributable to such special equipment when a vehicle with the equipment already installed is sold, either privately or by a dealer, for exclusive use by a person with physical disabilities. It requires the dealer to collect sales tax, or the private buyer to pay use tax, on the price of the vehicle alone.

EFFECTIVE DATE: Upon passage and applicable to all open tax periods.

#### **COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea     40     Nay   12     (04/07/2011)